

**Waukesha County**  
*Department of Parks and Land Use*

**MEMORANDUM**

To: Waukesha County Board of Adjustment

From: Rebekah Baum, Senior Land Use Specialist

Date: August 12, 2020

Subject: BA56: Extension request of BA11, Amy Thomas and Charlotte Thomas (owners) regarding the following properties:

Lot 1: Lot 1 of Plat of Subdivision of Lots 1 to 13 of Beaver Lake Hotel and Land Company Subdivision, located in part of the SE ¼ of Section 21 and part of the NE ½ of Section 28, T8N, R18E, Town of Merton. The property has no address.

Lot 2: Lots 6 and 7 of Plat of Reas Subdivision, located in part of the SE ¼ of Section 21, T8N, R18E, Town of Merton. Subject to access easement as recorded in Document No. 1145202, recorded on November 25, 1980. More specifically, the property is located at N64 W31243 Beaver Lake Road and has frontage on Beaver Lake.

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On July 11, 2018, the Waukesha County Board of Adjustment heard a request from the petitioners for variances from Section 3(j)2 Lot Size of the Waukesha County Shoreland and Floodland Protection Ordinance and Section 7.5 Blocks and Lots of the Waukesha County Shoreland and Floodland Subdivision Control Ordinances to allow the petitioners to adjust the common lot line and transfer a portion of lands from Lot 2 to Lot 1. The staff report and exhibits are attached as Exhibit A. The requested variances were approved, subject to several conditions. The conditions of approval were as follows:

1. A Certified Survey Map shall be submitted to the Town of Merton, Waukesha County, and Village of Chenequa for review and approval.
2. The Environmental Health Division shall approve of the proposed CSM, prior to the Director affixing his signature upon the Certified Survey Map.
3. A Termination of Easement document shall be prepared to eliminate the easement relative to Lot 3's lake access rights and recorded in the Register of Deeds office prior to the Director affixing his signature upon the Certified Survey Map. The Termination of Easement shall be reviewed and approved by Waukesha County Corporation Counsel.

**Planning and Zoning**

515 W Moreland Blvd., AC 230 • Waukesha, Wisconsin 53188-3878

Phone: (262) 548-7790 • Fax: (262) 896-8071 • [www.waukeshacounty.gov/planningandzoning](http://www.waukeshacounty.gov/planningandzoning)

The petitioners are requesting an additional five (5) month extension until December 19, 2020 of the granted variances from the Board of Adjustment in order to complete the conditions noted above. The request by the petitioners is attached as Exhibit B. The Rules of Procedure of the Waukesha County Board of Adjustment provide that, upon written application of the Appellant, without additional fee and for good cause as determined by the Board, a two-year extension may be granted if the permit is not exercised or obtained within the time allowed.

Since the July 11, 2018 public hearing, a Certified Survey Map (CSM) was reviewed and conditionally approved by Waukesha County Planning and Zoning Division and the Town of Merton. Waukesha County's conditional approval of the CSM included multiple items to be addressed, most of which are to be completed by the surveyor. The drafting of the termination of easement document and the remainder of the CSM approvals can take a considerable amount of time and often rely on schedules outside of the petitioner's control. The request to extend the deadline allows the petitioners adequate time to meet the required conditions and does not negatively impact adjacent property owners. While the petitioners are only requesting a five month extension, staff feels additional time may be appropriate given variability in the market at this time. Therefore, staff recommends approval of the request to extend the Board of Adjustment approval and recommends the Board consider an extension of two years to July 19, 2022.

Exhibits: "A" BA11, July 11, 2018 Staff Report and Recommendation  
"B" Petitioners Request for Extension

**WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE  
APPEAL FOR VARIANCE  
STAFF REPORT**

**EXHIBIT "A"**

**DATE:** July 11, 2018

**FILE NO.:** BA11

**OWNERS:** Amy Thomas, Charlotte Thomas and Patrick Lob  
N64W31243 Beaver Lake Road  
Hartland, WI 53029

**TAX KEY NO.:** MRTT: 0372.042 (Lot 1)  
MRTT: 0372.041 (Lot 2)

**LOCATION:**

**Lot 1:** Lot 1 of Plat of Subdivision of Lots 1 to 13 of Beaver Lake Hotel and Land Company Subdivision, located in part of the SE ¼ of Section 21 and part of the NE ½ of Section 28, T8N, R18E, Town of Merton. The property has no address.

**Lot 2:** Lots 6 and 7 of Plat of Reas Subdivision, located in part of the SE ¼ of Section 21, T8N, R18E, Town of Merton. Subject to access easement as recorded in Document No. 1145202, recorded on November 25, 1980. More specifically, the property is located at N64 W31243 Beaver Lake Road and has frontage on Beaver Lake. See Survey of Lot 1 and Lot 2, attached as Exhibit "A."

**REQUEST:**

Variances from **Section 3 (j) 2 Lot Size** of the Waukesha County Shoreland and Floodland Protection Ordinance ("Ordinance") and **Section 7.5 Blocks and Lots** of the Waukesha County Shoreland and Floodland Subdivision Control Ordinance ("Subdivision Ordinance") to allow the petitioners to adjust the common lot line and transfer a portion of lands from Lot 2 to Lot 1.

**ZONING CLASSIFICATION:** R-1 Residential (Lots 1 and 2)

**LOT INFORMATION AND HISTORY:**

**Lot 1:** The property is a legal lot of record created in 1908 and does not appear to have ever contained any improvements. The lot shape is a triangle with 82 ft. of frontage on Beaver Lake Road. The plat shows 16 ft. of frontage on Beaver Lake, which may be to the meander line. However, it appears as though the property may have less shoreline frontage than the 16 ft. shown on the original plat. The property has access to Beaver Lake. There is a kettle on the north side of the property near the road and the property is naturally vegetated. The parcel is nonconforming to lot size and lot width. This parcel is vacant and zoned for residential use. The property, as configured today, has a building envelope of approximately 1,800 sq. ft. At this time, the parcel is proposed to remain in open space, as there are no immediate plans to develop the property.

A Location Map was filed with the Register of Deeds in 1986 following a request made by the petitioners' father to review the lands. At that time, the survey specifically notes: "Side lot lines, as extended, intersect before existing shoreline, so Lot 1 (as platted) has no lake frontage." However, a Court case involving Lot 2, a third parcel (Lot 3), and an access easement (see below) notes that Lot 1, which was held in ownership

by the petitioners at the time, was “a lakefront parcel.” In addition, the Court of Appeals Decision notes that Waukesha County Corporation Counsel stated Lot 1 was a lakefront parcel.

**Lot 2:** The property consists of two legal lots of record created in 1919. The property is generally square, with approximately 149 ft. on Beaver Lake Road and approximately 160 ft. of frontage on the north side of Beaver Lake. The property has some mature vegetation along the property lines and slopes gently to the lake. The existing Lot 2 is nonconforming to lot size and lot width.

There is a single family home with attached garage and deck that is served by private septic system and well. The residence lies partially on both Lots 6 and 7. The residence is currently nonconforming to the west offset and road setback. The required offset is 20 ft., whereas the current residence is located only 18 ft. to the common lot line and only 6 ft. from the easement discussed below.

Lot 2 also includes a 12 ft. ingress/egress easement along the west property line for the purposes of providing lake access to a third lot, which is a non-riparian parcel located north of Beaver Lake Road (Lot 3). The petitioners hold Lot 1, Lot 2 and Lot 3 (Tax Key No. MRTT 0372.996.001) in common ownership.

#### **Easement background:**

The 12 ft. lake access easement was created in 1979, shortly prior to the adoption of the pyramiding standards within the Shoreland and Floodland Protection Ordinance, which prohibits providing lake access to non-riparian parcels. Therefore, the easement is a legal non-conforming use that has never been discontinued. The easement area is approximately 2,076 sq. ft.

#### **PROPOSAL:**

The petitioners are proposing that Lot 1 acquire lands from Lot 2 that encompass the aforementioned easement via a Certified Survey Map (Exhibit “B”). The common lot line would shift from a north-south orientation to a northwest-southeast orientation, providing Lot 2 with additional road frontage (approximately +20 ft.) and Lot 1 additional shoreline frontage (approximately +53 ft.). The proposal also eliminates said easement altogether, removing lake access rights to Lot 3. Although both lots are nonconforming, a variance is required from lot width and lot size because Lot 2 is becoming slightly more nonconforming, while Lot 1 is becoming more conforming. The existing, proposed and required average lot widths, average lot depths and lot sizes are shown in the following table.

<b><u>LOT 1</u></b>	<b>Average Lot Width</b>	<b>Average Lot Depth</b>	<b>Lot Size</b>
Existing Lot 1	42 ft. +/- (2 ft. +/- of shoreline frontage)	174 ft. +/-	7,061 sq. ft. +/-
Proposed Lot 1	56.5 ft. +/- (53 ft. +/- of shoreline frontage)	166 ft. +/-	8,913 sq. ft.
Required (SFPO and SFPO-SCO)	150 ft.	n/a	1 acre (43,560 sq. ft.)
Required per NR 115	100 ft. of shoreline frontage per NR 115		20,000 sq. ft. per NR 115

<b><u>LOT 2</u></b>	Average Lot Width	Average Lot Depth	Lot Size
Existing Lot 2	144 ft. +/- (155 ft. +/- of shoreline frontage)	158 ft. +/-	21,900 sq. ft. +/-
Proposed Lot 2	130.5 ft. +/- (108 ft. +/- shoreline frontage)	146 ft. +/-	20,000 sq. ft.
Required (SFPO and SFPO-SCO)	150 ft.	n/a	1 acre (43,560 sq. ft. per SFPO)
Required per NR 115	100 ft. of shoreline frontage per NR 115	n/a	20,000 sq. ft. per NR 115

The variances sought are from the following Ordinance provisions:

	Average Lot Width	Lot Size
SFPO	Section 3 (j) 2 C.	Section 3 (j) 2. D.
SFPO-SCO	Section 7.5 E.	Section 7.5 E.

### **PETITIONERS' COMMENTS:**

The petitioners' comments are attached as Exhibit "C".

### **STAFF RECOMMENDATION:**

The Planning and Zoning Division staff recommends **approval** of the request for variances from the Lot Size requirements of the Waukesha County Shoreland and Floodland and from the Blocks and Lots provisions of the Waukesha County Shoreland and Floodland Subdivision Control Ordinance to allow the lot size and lot width to be modified between two parcels. This recommendation is based upon the analysis of the criteria to be considered for a variance, as analyzed below. We recommend that this approval be subject to the following conditions:

1. A Certified Survey Map shall be submitted to the Town of Merton, Waukesha County, and Village of Chenequa for review and approval.
2. The Environmental Health Division shall approve of the proposed CSM, prior to the Director affixing his signature upon the Certified Survey Map.
3. A Termination of Easement document shall be prepared to eliminate the easement relative to Lot 3's lake access rights and recorded in the Register of Deeds office prior to the Director affixing his signature upon the Certified Survey Map.

### **VARIANCE TEST CRITERIA ANALYSIS**

State law and case law requires that the petitioner demonstrate that their request for a variance meets three tests. The below Staff analysis assesses the merits of the subject application relative to the tests:

1. **There are unique physical conditions existing on the property, which are not self-created, and**

**which prevent compliance with the ordinance thereby causing a hardship and/or no reasonable use. The physical limitations of the property, and not the personal circumstances or desires of the property owner, are the basis for this test. A variance is not a convenience to the property owner.**

The existing parcels are legal nonconforming parcels that are zoned for residential use. Lot 1 has remained in open space to this point, but a structure could be built on the lands provided it meets all zoning requirements at the time of application. Lot 1 is very small as compared to most properties on Beaver Lake at only 7,000 sq. ft. Its unique shape does not allow for reasonable use of the near lake area. The shore frontage on the property, as platted, has been debated for decades and approval of the variance will allow the petitioners to utilize the lake consistent with the platting over 100 years ago.

The easement is not clearly defined and is located only 6 ft. from the existing residence on Lot 2. The easement has caused legal issues between property owners. The petitioners desire to remove the easement removes an additional lake access right granted to a non-riparian parcel, which eliminates a nonconforming condition.

2. **Compliance with the ordinance would cause the owner to experience an unnecessary hardship. The test as to whether or not an unnecessary hardship exists is whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density, etc. would unreasonably prevent the owner from using the property for a permitted purpose, or whether it would render conformity with such restrictions unnecessarily burdensome. Hardships should not be financial or economic in nature. Variances are intended to provide only the minimum amount of relief necessary to allow a reasonable use of the property.**

The two subject lots are both legal nonconforming lots that do not meet the current lot size and lot width standards of the Waukesha County Shoreland and Floodland Protection Ordinance. The new configuration of proposed Lot 1 will allow more reasonable use of the property over the existing triangle configuration. In addition, while Lot 2 is decreasing in size by 1,900 sq. ft., it is still consistent with the lot size and lot width of other properties on Beaver Lake Road.

The existing nonconforming residence on Lot 2 will also become conforming to the offset requirement of the Ordinance. In addition, future owners of Lot 2 will not endure the burden of a lake access easement granted to a non-riparian parcel held in different ownership.

3. **The granting of the variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area. Lack of local opposition does not mean a variance will not harm the public interest.**

Historically, the existing lot configuration has caused civil disputes over shoreline frontage and pier rights. In addition to the 1996 court case that began with the owners of Lot 3 installing a pier within the easement, the parcel to the west has their pier located in a location that currently prevents Lot 1 from having a pier. Since Lot 1 and Lot 3 are currently in the same ownership, the pier is “shared” and is located within the easement; however, the location can still be problematic given position of the properties in the bay. The proposed lot configuration will benefit Lot 1, Lot 2 and the parcel to the west of the subject lands, as the existing frontage will be more evenly distributed and will allow

Lot 1 to have a pier on what is now a clear shore frontage area on their property. The pier rights of Lot 3 will be removed with the elimination of the easement, as proposed. Therefore, two piers exist for the three properties today and two piers will remain in a safer and more useable configuration.

All three parcels owned by the petitioners currently have lake access rights. As one of the parcels is not riparian, this is not a permitted use in the Shoreland and Floodland Protection Ordinance. Elimination of the easement will remove an access right from Lot 3 and eliminates a nonconforming use, thereby benefitting the public.

Respectfully submitted,

*Rebekah Leto*

Rebekah Leto  
Senior Land Use Specialist  
Phone: 262-548-7790

Exhibits: Exhibit "A": Current Plat of Survey  
Exhibit "B": Proposed Certified Survey Map, Sheet 1  
Exhibit "C": Petitioners Comments

EXISTING

BEING ALL THAT PART OF LOTS 6 AND 7 OF REA'S SUBDIVISION, & LOT 1  
OF THE PLAT OF SUBDIVISION OF LOTS 1 TO 13 INCLUSIVE OF BEAVER  
LAKE HOTEL AND LAND COMPANY SUBDIVISION LOCATED IN THE EAST 1/2  
OF THE SE 1/4 OF SECTION 21, T.8N., R.18E., TOWN OF MERTON,  
WAUKESHA COUNTY, WISCONSIN

LEGEND

● - 1" DIA. IRON PIPE FOUND  
□ - CONCRETE SEPTIC LID



SCALE : 1" = 30'

PROJECT NO. 18-3244

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JUN 13 2018

DEPT OF PARKS &amp; LAND USE

**EXHIBIT "B"**ARC™  
(262) 542-8200

PROPOSED

FORM ARC-101

**CERTIFIED SURVEY MAP NO.** \_\_\_\_\_ Sheet 1 of 4  
Lot 1 of Beaver Lake Hotel & Land Company Subdivision and Lots 6 and 7 of Plat of Reas Subdivision  
And part of Lot 5 of Plat of Reas Subdivision being part of the SE ¼ and SW ¼ of the SE ¼ of  
Section 21, Town 8 North, Range 18 East  
TOWN OF MERTON, WAUKESHA COUNTY, WISCONSIN

**SURVEYOR:**  
JOHN R. STIGLER, RLS  
JAHNKE & JAHNKE ASSOC. INC.  
711 WEST MORELAND BLVD.  
WAUKESHA, WI 53188-2479  
PHONE: (262) 542-5797

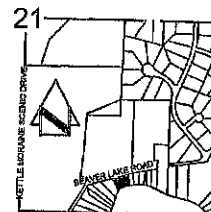
**OWNER:**  
AMY THOMAS  
N64 W31243 BEAVER LAKE ROAD  
HARTLAND, WI 53029-9761

**LEGEND:**

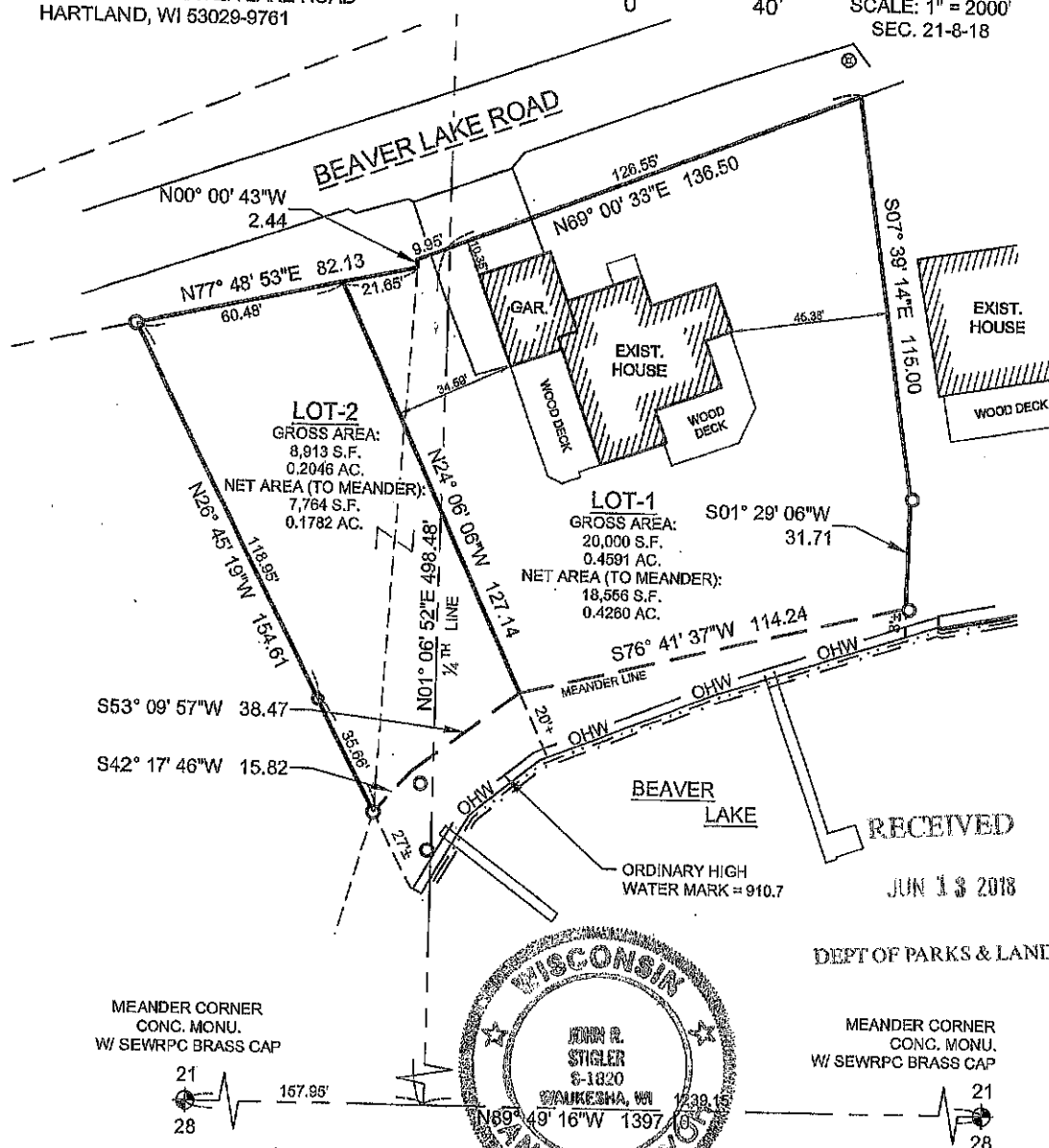
- ⊗ FOUND IRON ROD
- FOUND IRON PIPE
- FOUND RR SPIKE
- 21  
⊗ FOUND CONC. MON
- 28



SCALE IN FEET  
0 40'

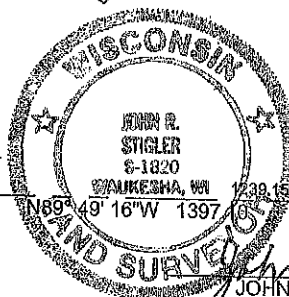


VICINITY MAP  
SCALE: 1" = 2000'  
SEC. 21-8-18



P.S. MERTON 738

FILE NAME: S:\projects\S8738\dwg\S8738.dwg



JOHN R. STIGLER, Wis. Reg. No. S-1820  
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018  
INSTRUMENT DRAFTED BY JOHN R. STIGLER

WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE  
PLANNING AND ZONING DIVISION  
515 W. Moreland Blvd. Room AC230  
Waukesha, Wisconsin 53188  
(262) 548-7790

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EXHIBIT "C"

county.gov Website [www.waukeshacounty.gov/planningandzoning](http://www.waukeshacounty.gov/planningandzoning)

DEPT OF PARKS & LAND USE  
Waukesha County Board of Adjustment

VARIANCES, SPECIAL EXCEPTIONS, AND APPEALS FROM THE WAUKESHA COUNTY BOARD OF ADJUSTMENT

Office Use Only (form created 11/9/2016): 118950 BOA File No.: BA11  
Shoreland/Floodland Protection Ordinance X County Zoning Code R-1 Airport Height Ordinance X  
Zoning District(s) R-1 Shoreland/Floodland Subdivision Control Ordinance  
Application is hereby made for a Variance, Special Exception and/or Appeal from the following section(s):  
\_\_\_\_ Road Setback \_\_\_\_ Offset \_\_\_\_ Shore Setback \_\_\_\_ Floodplain Setback \_\_\_\_ C-1 (EFD) \_\_\_\_ Wetland Setback  
\_\_\_\_ Bldg. Footprint \_\_\_\_ Accessory Bldg. Footprint \_\_\_\_ Min. Floor Area \_\_\_\_ Bldg. Height \_\_\_\_ Impervious Surface  
\_\_\_\_ Work beyond 50% Value \_\_\_\_ Work beyond 50% Structural Members X Other (list) lot size, lot width  
\_\_\_\_ Nonconforming Structure Improvements (specify) \_\_\_\_\_

Town Merton Address of Subject Property (see attached)  
Tax Key No(s). (see attached) Section 21 Legal Description (see attached)

Charlotte A. Thomas/Patrick Lob  
and Amy E. Thomas  
Owner N64 W31280 Beaver Lake Road Hartland WI 53029 (262) 369-8283  
Mailing Address City State Zip Daytime Phone No.

Applicant (if different from above) Mailing Address City State Zip Daytime Phone No.

Email address and/or fax number if you would like a copy of the staff report forwarded to you prior to the meeting:  
amythomas325@gmail.com and ctrees@wi.rr.com

Describe the proposed construction/request and use in detail: All three parcels are jointly owned by the same three owners. We propose to remove a problematic easement (see Exhibit 1) granted to a property across the road from the lake (Parcel C) and granted from Parcel B. In brief, the easement is a 12' wide area along the west boundary line of Parcel B - ingress and egress from Beaver Lake Road to Beaver Lake. We propose to move the lot line between Parcels A and B to give Parcel A more frontage at the shoreline and remove the easement from Parcel B.

Section 59.694 (7)(c) of the 2003-2004 Wisconsin State Statutes and Wisconsin case law (Ziervogel-McGinnity v. Washington County, Snyder v. Waukesha County) requires the petitioner to demonstrate that their request for a variance meets the following three tests (Please explain how your variance request meets ALL three tests for a variance (attach additional sheets if necessary):

1. Compliance with the ordinance would cause the owner to experience an unnecessary hardship. The test as to whether or not an unnecessary hardship exists is whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density, etc. would unreasonably prevent the owner from using the property for a permitted purpose, or whether it would render conformity with such restrictions unnecessarily burdensome. Hardships should not be financial or economic in nature. Variances are intended to provide only the minimum amount of relief necessary to allow a reasonable use of the property.

Problematic easement is unnecessarily burdensome: This easement (see attached) was created in 1979 by the owner of Parcel B. Parcel B was then sold to Millen who acknowledged the easement in writing at the time of purchase. The owners of Parcel C (Thomas, who also owned Parcel A) reluctantly purchased the easement to prevent overcrowding at the shoreline. This began years of attempts by Millen (involving Park and Planning and the District Attorney's office) to make Thomas remove their pier (Continued on p. 1.)

2. There are unique physical conditions existing on the property, which are not self-created, and which prevent compliance with the ordinance thereby causing a hardship and/or no reasonable use. The physical limitations of the property, and not the personal circumstances or desires of the property owner, are the basis for this test. A variance is not a convenience to the property owner.

The existing shape of Parcel B is triangular, with the narrowest part at the shoreline. This makes its use very restrictive as it concentrates all of the "front lawn" activity of a residential parcel to an area of 16' at the meander line. It is wooded with mature trees. Walking to

the lake without stepping outside the property line is difficult and unnatural because of its odd shape. Also, there is a large maple tree and root base at the meander line leaving only narrow area on either side to walk to the lake. (Continued on p. 1)

3. The granting of the variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties/improvements or the natural resources in the area. Lack of local opposition does not mean a variance will not harm the public interest.

Moving this lot line will result in Parcels A and B having shoreline widths that are more consistent with the other lots in the area.

According to the Waukesha County GIS Map, the lot widths at the shoreline of the properties to the east are 65', 75', 73' and 100' and to the west are 100', 85', and the next 5 lots are similar in size. 3 lot widths are not provided, but appear similar in size to the other two, which are 63'.

#### ITEMS THAT MUST ACCOMPANY ALL VARIANCES, SPECIAL EXCEPTIONS, AND/OR APPEALS:

1. Two (2) copies of an accurate site plan/map (a plat of survey is preferred) drawn to scale showing the following:
    - A. The boundaries and dimensions of the subject property.
    - B. The location and dimensions of all existing and proposed structures and buildings on the property.
    - C. The location and dimensions of all buildings and structures on adjacent properties.
    - D. The location and centerline of all abutting streets.
    - E. The 100-year floodplain, wetland boundary, and the ordinary high water mark of any water body which the lot abuts.

**NOTE:** Maps, plans and surveys shall not be reduced, enlarged, or faxed as these functions alter the scale. The scale of the map shall not be altered.
  2. A zoning permit, wetland notice form, impervious surface worksheet, nonconforming use and structure value and structural members worksheets, building plans, grading plan and/or Environmental Health approval may also be required.
  3. The required filing fee, payable to the Waukesha County Department of Parks and Land Use. Once the public notice has been sent, this fee is nonrefundable.
- Application must be complete upon submittal. Once the public notice has been sent, no changes to the request may be made. If any changes or deviations from the original application are desired after the public notice has been sent, a new application will be required.
  - Variances from multiple ordinance provisions may be requested as part of a single application, but only one proposal may be made per application. Each alternative proposal will be considered a separate request and require a separate application packet and fee.
  - Submittal and subsequent review of this application may include a site inspection. Please advise the staff if dogs are not secured on the site and/or if dogs would be a problem during the inspection. By signing this form, the owner or his/her authorized agent is giving their consent for the Dept. of Parks and Land Use to inspect the site as necessary and related to this application even if the property has been posted against trespassing pursuant to Wis. Stat.
  - Please advise the staff of any scheduling conflicts at the time of submittal, and we will attempt to accommodate your schedule.
  - Board of Adjustment meetings may not be held every month. The Board has 90 days to hear a request.

The undersigned owner hereby certifies that all of the above statements, information and attachments contained herein (site plan/survey, building plans, exhibits, etc.) are true and accurate to the best of his or her knowledge and belief.

C. Thomas  
C. Thomas  
[Signature]

Signature of the Owner

6/12/18  
6/12/18  
6/12/18

Date

Same as above

Signature of the Applicant

[Signature]  
Staff member receiving the application

Date

6-13-18  
Date

NOTES:

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JUN 13 2018

**Tax key numbers:**

MRTT 0372 042 (Parcel A) A small (approx. 7,081 sq. ft.) residential lot with 16' at the meander line of Beaver Lake. (Lot 1) This property shares its east lot line with Parcel B. DEPT OF PARKS & LAND USE

MRTT 0372 041 (Parcel B) A parcel with a single family home with 158' at the meander line of Beaver Lake (still showing as two lots (6 & 7) combined for tax purposes.) Land area is 21,900 sq. ft. This property shares its west lot line with Parcel A.

MRTT 0372 996 001 (Parcel C) A single family home (approx. 16 acres,) located across the road from Beaver Lake and including a deeded easement on Parcel B of 12' along the west lot line (the line shared between Parcels A and B.)

**Addresses:**

Parcel A -- No address

Parcel B -- N64 W3243 Beaver Lake Road Hartland, WI 53029

Parcel C -- N64 W3280 Beaver Lake Road Hartland, WI 53029

**Legal Descriptions:**

Separate attachments

**Continued from application**

1. and to have the easement removed. In 1992 Millen sued Thomas presenting several different reasons why the easement was illegal, none of which were upheld. After exhausting the appeals process, a final decision was rendered in 1995 in favor of Thomas.

In 2000 Parcel B was sold to Kerns. Kerns contacted Thomas (after learning that Thomas was ill and shortly before her passing) requesting that she sign a document making the easement null and void upon her passing. This was declined and Kerns was given a copy of the court decision by the Thomas heirs. That summer Kerns installed a second full-length pier as far west as possible on Parcel B. Parcel A, is an embayment and Thomas's short pier was then eclipsed and within feet of this second pier.

Creating straightforward lines of ownership will eliminate the interconnection between these three properties and make it possible for normal neighbor relationships.

**Parcel A** will be benefited by reducing the potential for "pier crowding" and create more space between neighbors.

**Parcel B** will be benefited by not having to accommodate ingress and egress within 6' of the garage at the roadway and by not having the responsibility of shoreline frontage that is virtually unusable -- (the assessor's office has noted that 110' is the useable frontage for this

(over)

property.) The structure of Parcel B is currently setback from the existing lot line only 18'. The proposed lot line change will make the structure conforming with the setback at 34.59'. **Parcel C** will be benefited by removing the value of the easement from this property and allowing it to be independent from the two properties across the street.

2. The "frontage" part of Parcel B that will become frontage for Parcel C, is a small embayment that collects dead leaves and flotsam; this debris does not move out of the embayment as it is trapped. Because the shoreline of Parcel B is straight for over 100', the embayment is typically ignored. Since the proposed Parcel C frontage expansion will be the only usable frontage for Parcel C, continued removal of dead leaves and debris will be done to keep it desirable for use. This benefits the neighboring properties as well as the lake both environmentally and aesthetically. (Continued on page 1)

The neighbor's residence to the west of Parcel C is a boathouse. The topography on either side of the boathouse and the boathouse itself, occupy much of their 100' frontage. The only area for them to use as "lawn" at the shore is next to the lot line shared with Parcel C. Any social activity at the shoreline for both properties is done within feet of this lot line. Moving the lot line will reduce this crowding at the shore.

## EXHIBIT "B"

July 8, 2020

Jacob A. Heermans  
Senior Land Use Specialist  
Waukesha County Department of Parks & Land Use  
Planning & Zoning Division  
515 West Moorland Blvd  
Waukesha, WI 53188

Re: BA11, Town of Merton

To Whom it May Concern,

We are requesting that the above referenced variance granted in 2018 and expiring July 19, 2020 be extended (5 months) to December 19, 2020.

We started to get the approval from the Town of Merton and Village of Chenequa shortly after the variance was approved. We got on Merton's agenda in late September sometime and they approved it, but we decided to wait to get the Village's approval.

We had intended to sell the lake property with the single family home on it in late 2018/early 2019 and have the lot line change and termination of easement take place at the time of closing. The property was on the market in 2019 but did not sell. With the covid concerns this spring, we did not put the property back on the market in the spring.

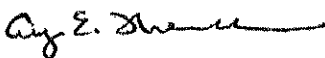
We have started the process of getting approval from the mortgage company which holds a mortgage on residence on the lake property, but realize that the process will take more time than anticipated.

We have contacted Jahnke and Jahnke to create the new legal descriptions.

Freddie Mac requires a written request and documentation, which we are currently working on.

We realize that time is of the essence and will move forward to complete this process as soon as possible.

Sincerely,



Amy E. Thomas



Charlotte A. Thomas